



**Internal Revenue Service**  
Alcohol, Tobacco and Firearms Division  
Washington, D.C. 20224

# Industry Circular

Industry Circular No. 69-27

December 12, 1969

## GAME MATERIALS WITH PACKAGES OF TOBACCO PRODUCTS

Manufacturers of tobacco products:

A revenue ruling has been approved for publication in the Internal Revenue Bulletin which holds that materials relating to a described game may be associated with tobacco products packages since the game is not a lottery within the meaning of Section 5723(c), Internal Revenue Code. Substantially, the ruling will read as follows:

Advice has been requested as to whether materials relating to a product promotion game could be associated with packages of tobacco products. The game contemplates distribution of prizes to contestants who successfully present the correct answers to a puzzle, with a similar run-off puzzle if more than a certain number of contestants successfully solve the first puzzle. All winners of the one run-off puzzle would win a prize, regardless of the number of successful contestants. All winners would be awarded identical prizes. Purchase of packages of the tobacco products would be necessary to obtain some of the materials necessary to participate in the game.

Section 5723(c) of the Internal Revenue Code of 1954 reads as follows:

"Lottery Features.--No certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products or cigarette papers or tubes."

A lottery is generally considered to include three essential elements: (1) consideration, (2) prize, and (3) chance. FCC v. American Broadcasting Co., 347 U.S. 284(1954). The first two elements are clearly present in the proposed game. However, after careful study it has been determined that the game is not a lottery because it is so designed that neither the winner nor the size of the prize is dependent upon chance. Knowledge obtained by skillful research is necessary to solve the puzzle(s) and all winners are awarded identical prizes. Further, the game does not directly or by implication purport to be a lottery.

It is held, therefore, that materials relating to this game are not prohibited by Section 5723(c) of the Code from being associated with packages of tobacco products.

Any inquiries regarding this circular should be made to the office of the Director, Alcohol, Tobacco and Firearms Division (Attn: Tobacco Tax Branch), Washington, D. C. 20224.

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